

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO MONTEJO, ACCUSED-APPELLANT.

G.R. No. 133475. March 26, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated October 3, 1997, of the Regional Trial Court, Branch 24, Cagayan de Oro City, finding accused-appellant Ernesto Montejo guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the complainant Juvelyn Labalan y Boiles[2] in the amount of P50,000.00 without subsidiary imprisonment in case of insolvency but with full credit for the preventive imprisonment he had already served.

The record shows that on November 29, 1989, a criminal complaint for simple seduction, allegedly committed on August 10, 1989, September 20, 1989, October 25, 1989, October 27, 1989, and November 2, 1989 was filed before the 8th Municipal Circuit Trial Court of Initao-Libertad, Misamis Oriental by Juvelyn B. Labalan against accused-appellant. On January 2, 1990, Judge Maximo B. Ratunil of said court ordered a re-investigation as "the crime charged against the accused does not correspond to the evidence adduced before him." Thus, on January 12, 1990, an amended complaint for rape allegedly committed on August 10, 1989 was filed. On January 29, 1990, the amended complaint was again amended to allege that the rape was committed on November 16, 1989. After the preliminary investigation, Judge Ratunil issued a warrant of arrest on February 1, 1990, but accused-appellant could not be found. He was finally arrested only on February 6, 1995.[3]

On July 11, 1990, an information[4] for rape against accused-appellant was filed, alleging —

That on or about 1:00 o'clock in the afternoon on August 10, 1989 [in] Sitio Panimugsalan, Gimaylan, Libertad, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did and then and there willfully, unlawfully, and feloniously, and by means of force, violence, and intimidation pinned down one Juvelyn B. Labalan, 12 years old, succeeded in having carnal knowledge with her against her will and consent.

CONTRARY TO and in VIOLATION of Article 335 of the Revised Penal Code.

When arraigned, accused-appellant pleaded not guilty to the charge, whereupon trial commenced.

The prosecution presented six witnesses, namely, complainant Juvelyn B. Labalan, Dr. Rosana Tuazon, Maria Labalan, Delfin Hinisan, Myrna de los Reyes, and Dr. Eric Borromeo. Three other witnesses, namely, Delfin Bongay, Sofronio Labalan, and Rosalio Dayadaya, were presented on rebuttal.

Complainant Juvelyn B. Labalan testified that at around 1:00 p.m. on August 10, 1989, she was selling fish in Sitio Panimugsalan, Gimaylan, Libertad, Misamis Oriental. When she passed by the house of accused-appellant Ernesto Montejo, the latter called her. Thinking that he would buy fish, Juvelyn went to accused-appellant's house. As there were then no other people in the house, accused-appellant seized and embraced her ("gilayog ko

niya"). He tied her hands with a nylon rope and covered her mouth with a handkerchief. He then took her to a grassy area at the back of the house, where he first undressed and then kissed her from shoulder down to her abdominal area before finally forcing himself on her. She claimed that the accused-appellant's push and pull movements ("gi-kiyo-kiyoan ko") were painful. Juvelyn claimed that she was threatened with death if she reported the incident. When she reached home, therefore, she did not tell her parents what had happened. Instead, she made it appear that all the fish had been sold but that she had not yet been paid for it by accused-appellant.

Dr. Rosana Tuazon of Libertad Rural Health Unit examined Juvelyn on November 17, 1989 after which she issued a medical certificate (Exh. A).[5] She testified that Juvelyn's hymen was no longer intact and instead had healed lacerations.[6]

Maria Labalan is the stepmother of Juvelyn. She testified that she and Juvelyn's father were married in 1982. On November 17, 1989, Juvelyn told her that she had been raped the previous day. She said that Juvelyn confided to her that accused-appellant had been raping her since August 10, 1989, and that because of this, Juvelyn, then in Grade II, had stopped schooling. Maria Labalan took Juvelyn to the Libertad Health Center for a physical examination and, later, to the Libertad Municipal Hall to file a criminal complaint against accused-appellant.[7]

Delfin Hinisan, a policeman assigned to the Provincial Command in San Martin, Villanueva, testified that accused-appellant was arrested in the morning of February 6, 1995.[8]

Myrna de los Reyes, a guidance psychologist in the Northern Mindanao Regional Training Hospital, testified that on April 18, 1995, she conducted a psychological examination on Juvelyn, which showed that the complainant had intellectual capacity below the normal level, although she was not a mental retardate.[9]

Dr. Eric Borromeo, a medical specialist in the Northern Mindanao Medical Center, stated in his report (Exh. G)[10] that after conducting several psychological tests, he found that Juvelyn was suffering from anxiety and nervousness and that she was having difficulty in sleeping which she never experienced prior to the rape incident.[11]

On the other hand, the defense presented the following witnesses: accused-appellant Ernesto Montejo, Teodosia Dayadaya, Virginia Lomongo, and Romeo Bagares.

Accused-appellant testified that five other criminal complaints for rape against him had been dismissed for failure of Juvelyn to appear during the preliminary investigation of the case.[12] He denied having raped Juvelyn B. Labalan. He stated that, in 1989, he received a call from his brother so he went to Manila to look for work and stayed there for five years. He averred that when he left for Manila, there was no complaint against him. When his wife visited him in Manila, she did not inform him of any criminal complaint against him. He went back to Initao on December 25, 1994. He admitted knowing Juvelyn as they were neighbors. Juvelyn used to go to his house with Joseph Bagares to play in his backyard. He claimed that he had a quarrel with the mother of Juvelyn because he stoned the latter's pig which had destroyed his corn plants.[13]

Teodosia Dayadaya, aunt of Juvelyn and sister of the latter's mother, testified that she and her husband, Rosalio Dayadaya, had stayed in Panimugsalan, Libertad from 1985 to 1989 on the land owned by Mayor Nazario Akut, municipal mayor of Libertad. She stated that her house is about 50 meters away from accused-appellant's house. She said that on August 10, 1989, she saw Juvelyn playing with Joseph Bagares at 7:00 a.m. under a mango tree near the house of accused-appellant. She also saw accused-appellant alone at about 4:00 p.m. in his house, but Juvelyn was not around anymore at that time. She said Juvelyn used to play under the mango tree and only stopped doing so on November 29, 1989 when her mother no longer allowed her to do so. Teodosia Dayadaya declared that the charge against accused-appellant was false because on August 10, 1989, she did not hear any cry

or shout from Juvelyn.[14]

Virginia Lomongo, another resident of Panimugsalan, Libertad, whose house is about 80 meters away from accused-appellant's residence, corroborated the testimony of Teodosia Dayadaya. She testified that on August 10, 1989 and prior thereto, she used to see Juvelyn outside the house of accused-appellant climbing the mango tree or playing with Joseph Bagares. She said that Juvelyn stopped playing there in December 1989.[15]

Romeo Bagares, a friend of accused-appellant, also corroborated the testimonies of Teodosia Dayadaya and Virginia Lomongo. He testified that Juvelyn is the friend of his son Joseph, then ten years old. He said that before August 10, 1989, Juvelyn and Joseph used to go to the house of accused-appellant. Juvelyn stopped going there in December 1989 when Joseph left for Don Carlos.[16] On cross-examination, Romeo Bagares admitted that he belongs to the group of Mayor Nazario Akut who was a member of the Lakas-NUCD political party.[17]

The prosecution presented witnesses in rebuttal. Delfin Bongay testified that he had known Teodosia and Rosalio Dayadaya since 1969 as they were his neighbors. Their houses were just 50 meters apart from each other. Sometime in the first week of October, 1995, the Dayadayas went to his house convincing him to look for two witnesses who could testify in favor of accused-appellant. As he told them that he knew nothing about the case, they left. For the next two days, they came back to see him and reiterated their request, but in both instances, he turned them down. He was informed by them that Mayor Nazario Akut had sent them to see him.[18]

Sofronio Labalan, brother of complainant Juvelyn B. Labalan, testified that at about 8:00 a.m. of March 4, 1995, Mayor Akut, brother-in-law of accused-appellant, came with a man from the CIS asking that the case be settled.[19] On the other hand, Rosalio Dayadaya testified that, on December 28, 1989, he executed an affidavit (Exh. J)[20] before Judge Maximo Ratunil during the preliminary hearing of the case stating that on November 17, 1989, as he and his wife Teodosia went down their house, they saw Juvelyn crying and that Juvelyn told them that she was raped by accused-appellant; that he and his wife Teodosia were residents of Sitio Kalindanawan, Initao, Misamis Oriental since 1989; and that his wife Teodosia was also informed about the rape incident on November 17, 1989.

The trial court initially opined that Rosalio's testimony should be dispensed with, but nonetheless allowed him to testify so as to rebut the testimony of his wife Teodosia who had testified for the defense. When his affidavit, dated December 28, 1989 (Exh. J) was presented to him, however, Rosalio admitted executing the same but denied affixing his signature thereon, claiming that he could not even read.

The case was then submitted for decision. However, accused-appellant moved for a re-opening of the case which the trial court granted. Accused-appellant presented Cagayan de Oro City Assistant Provincial Prosecutor II Ma. Anita Esguerra-Lucagbo, who testified that on May 13, 1996, Juvelyn appeared before her in the company of Mayor Nazario Akut, who is the brother-in-law of accused-appellant. Juvelyn had an affidavit (Exh. 1),[21] dated May 13, 1996, written in the Visayan dialect. Juvelyn told her that the affidavit had been prepared in Initao and that she had voluntarily executed the same. Prosecutor Lucagbo therefore administered to Juvelyn. While talking to her, Juvelyn requested Mayor Akut to leave the office and he did so. Juvelyn told the prosecutor that the affidavit had been voluntarily executed by her.

On October 3, 1997, the trial court rendered its decision finding accused-appellant guilty of rape. It gave credence to Juvelyn's testimony in open court and rejected her affidavit, dated May 13, 1996, recanting her testimony. The dispositive portion of its decision reads:

WHEREFORE, premises considered, the court hereby finds accused ERNESTO MONTEJO guilty beyond reasonable doubt as principal of the offense of rape defined and penalized by Art. 335 of the Revised Penal Code. Consequently, he is hereby sentenced to a penalty of Reclusion Perpetua.

Additionally, he should indemnify the private offended party the sum of P50,000.00 which is jurisprudential without, however, subsidiary imprisonment in case of insolvency. Accused is credited fully of the preventive imprisonment he has undergone.

SO ORDERED.[22]

Hence this appeal.

First. Accused-appellant avers that the trial court erred in not giving weight to the affidavit of retraction of complainant Juvelyn Labalan.

The contention has no merit. Records show that after the case was submitted for decision, accused-appellant filed on May 15, 1996 a "motion to re-open case for the defense on ground of new evidence." [23] A hearing was set, and the defense presented Asst. Prosecutor Lucagbo who testified that on May 13, 1996, Juvelyn appeared before her with an affidavit (Exh. 1) [24] recanting her earlier testimony. She claimed that she administered the oath to Juvelyn after the latter said she voluntarily executed the affidavit. Although Juvelyn was accompanied by Mayor Nazareno Akut to her office, Prosecutor Lucagbo said the mayor stepped out of her office when she talked to Juvelyn regarding her affidavit. [25]

In her affidavit (Exh. 1), originally executed in Visayan dialect, and later translated in English (Exh. 2-B), [26] Juvelyn, then already of 19 years of age, stated:

Republic of the Philippines)
City of Cagayan de Oro)S.S.

A F F I D A V I T

That I, Juvelyn Labalan y Boiles, 19 years old, single, and a resident of Kalindanawan, Initao, Misamis Oriental, having been duly sworn to in accordance with law, depose and say:

- That I am the complainant for RAPE against ERNESTO MONTEJO, now pending before RTC, Branch 24, Cagayan de Oro City;
- That it is not true that I was raped by Ernesto Montejo last August 10, 1989, that indeed nothing happened between us because Ernesto Montejo treated me as a daughter;
- That because on August 10, 1989, I was then 12 years old and of immature mind, I was forced by my stepmother, Maria Labalan, and my brother, Sofronio Labalan, to fabricate charges against Ernesto Montejo to the effect that he raped me because Maria Labalan and Sofronio Labalan wanted to milk money from Mayor Nazario Akut because Ernesto Montejo is a brother [of] the mayor's wife;
- That because of my tender mind and of my fear of my stepmother and brother, I was forced to execute an affidavit on November 27, 1989 before the police and Hon. Maximo Ratunil, although all the contents of said Affidavit are not true, I was forced to tell a lie before the Honorable Court when I was forced by my stepmother and brother to testify against Ernesto Montejo;
- That everything in said Affidavit and everything I testified to before the Honorable Court against Ernesto Montejo are not true and merely fabricated by my stepmother and brother that they taught me to tell in my affidavit and to tell before the court;
- That the truth is that nothing really happened with me and Ernesto Montejo ever since and he did not even court me, but the intention of my stepmother and my brother to force me to fabricate charges against Ernesto Montejo is that they could make money;
- That I executed this Affidavit to ask the Honorable Court not to pursue the punishment of Ernesto Montejo

because he has not committed any wrong against me.

(SGD.) JUVELYN B. LABALAN
(Affiant)[27]

The affidavit in question must be looked upon with disfavor. The mere retraction by a prosecution witness does not necessarily vitiate his original testimony. As held in *People v. Amban*:^[28]

. . . Merely because a witness says that what he had declared is false and that what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credibility. The rule is that a witness may be impeached by a previous contradictory statement [now Rule 132, section 11]; not that a previous statement is presumed to be false merely because a witness now says that the same is not true. The jurisprudence of this Court has always been otherwise, i.e., that contradictory testimony given subsequently does not necessarily discredit the previous testimony if the contradictions are satisfactory explained. (*U.S. vs. Magtibay*, 17 Phil. 417; *U.S. vs. Briones*, 28 Phil. 362; *U.S. vs. Dasiip*, 26 Phil. 503; *U.S. vs. Lazaro*, 34 Phil. 871). We have also held that if a previous confession of an accused were to be rejected simply because the latter subsequently makes another confession, all that an accused would do to acquit himself would be to make another confession out of harmony with the previous one. (*U.S. vs. Acasio*, 37 Phil. 70). Similarly, it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because witnesses who had given them later on change their mind for one reason or another, for such rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses. . . . The rule should be that a testimony solemnly given in court should not be lightly set aside and that before this can be done, both the previous testimony and the subsequent one be carefully compared, the circumstances under which each given carefully scrutinized, the reasons or motives for the change carefully scrutinized--in other words, all the expedients devised by man to determine the credibility of witnesses should be utilized to determine which of the contradictory testimonies represents the truth.

Indeed, it is unnatural for Juvelyn to recant her testimony given in open court, after going through the proceedings. Her criminal complaint, originally for simple seduction, was amended twice until an information for rape, committed on August 10, 1989, was filed against accused-appellant.^[29] On November 9, 1995, she filed a motion for reconsideration (Exh. I)^[30] questioning the resolution (Exh. 1-A),^[31] dated September 27, 1995, of Asst. Prosecutor Lucagbo which dismissed her five (5) criminal complaints for rape allegedly for her failure to appear during the scheduled preliminary investigation. She explained that the notice of preliminary investigation was received by her counsel just two days prior to the scheduled hearing and that the failure of her counsel to inform her of the investigation was because of inadvertence and heavy workload. She said that even if her counsel did not overlook the date of the preliminary investigation, he still would not have reached her at home as she was then in Iligan City applying for work. Neither was her stepmother, who received the subpoena, able to reach her.

Furthermore, on May 29, 1996, she filed an "opposition to the defense[s] motion to re-open the case"^[32] on the ground that her affidavit of recantation does not constitute "newly discovered evidence" under Rule 121, §§2 and 4 of the Revised Rules on Criminal Procedure which would warrant a new trial of the case. On January 3, 1996, she filed a "supplemental to the plaintiff's memorandum" questioning the admissibility and probative value of the affidavit of recantation on the following grounds, to wit: that the affidavit was prepared beforehand and presented to Prosecutor Lucagbo; that Mayor Nazario Akut, brother-in-law of accused-appellant, with two companions, went with her to the office of Prosecutor Lucagbo to sign the affidavit; that the affidavit was merely signed "Labalan" instead of her usual full signature "Juvelyn B. Labalan."

There is thus doubt as to the voluntariness of Juvelyn's affidavit which cautions against its admission. Retractions are unreliable and are looked upon with disfavor by the courts. After going to the trouble of having

accused-appellant arrested by the police, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her misfortune, it is unlikely that Juvelyn would just throw overboard her efforts at securing justice by simply executing an affidavit of recantation.[33] In this case, Juvelyn had to stop schooling, finishing only Grade II, because of her disgrace. It is noteworthy that it was Mayor Nazario Akut, brother-in-law of accused-appellant, together with two men, who accompanied Juvelyn to the prosecutor's office for her to sign a prepared affidavit retracting her previous testimony. In *People v. Echegaray*,[34] we held that an affidavit of desistance is merely an additional ground to buttress the accused's defenses, not the sole consideration that can result in acquittal. There must be other circumstances which, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses during the trial and accepted by the judge.

It bears stressing that Juvelyn was not recalled to the witness stand to testify on her affidavit, making the same hearsay. As we observed in *Alonte v. Savellano, Jr.*,[35] it is absurd to disregard a testimony that has undergone trial and scrutiny by the court and the parties simply because an affidavit withdrawing the testimony is subsequently presented by the defense. Any recantation must be tested in a public trial with sufficient opportunity given to the party adversely affected by it to cross-examine the recanting witness.

It is error for accused-appellant to insist that the affidavit of Juvelyn constitutes "newly discovered evidence." Under Rule 121, §2 of the Revised Rules of Criminal Procedure, the only grounds for new trial are: (a) that errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial and (b) that new and material evidence has been discovered and which if introduced and admitted, would probably change the judgment. As held in *People v. Dalabajan*,[36] motions for new trial based on affidavits of retraction are, in general, entitled to scant consideration. If new trials were granted every time an interested party succeeds in inducing a witness to change his testimony, there would never be an end to criminal litigation.

Second. Accused-appellant contends that complainant's testimony is highly incredible and inconsistent.

This, too, has no merit. The trial court correctly gave full faith and credence to Juvelyn's testimony rather than to the evidence for the defense. Accused-appellant was positively identified as the perpetrator of the crime by Juvelyn, who was almost 12 years old at the time of the incident, having been born on April 26, 1977 per certification of the Office of the Local Civil Registrar (Exh. 2).[37] We have ruled that testimonies of child victims of rape are generally accorded full weight and credit. A young girl's revelation that she has been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give the details of her ignominy, cannot be dismissed as a mere concoction,[38] especially if she has no ill motive to testify falsely against accused-appellant.[39]

In the sworn statement of Juvelyn,[40] dated November 22, 1989, executed in the Visayan dialect, she declared that she was raped six times by accused-appellant on six different occasions: August 10, 1989, September 20, 1989, October 25, 1989, October 27, 1989, November 2, 1989, and November 20, 1989. Her stepmother, Maria Labalan, testified that she was informed by Juvelyn about the rape incident of November 16, 1989.[41] Despite these declarations, the Court can only affirm the rape committed on August 10, 1989 which was alleged in the information and proved during the trial. In the rape committed on August 10, 1989, the prosecution was able to establish that force, violence, and intimidation attended the commission of the crime.

Accused-appellant says Juvelyn's testimony is incredible because she testified she kept complaining to accused-appellant when her mouth was supposed to have been covered with a handkerchief. Accused-appellant also finds it improbable for him, per Juvelyn's testimony, to have stayed in the grassy area from 1:00 to 5:00 p.m. just to consummate the alleged rape against her. Accused-appellant contends that rape committed in an open place

should be done quickly and that three hours would have been sufficient time within which to commit the crime, especially because it was then daytime.[42]

These contentions have no basis. For one, Juvelyn did not really say the rape lasted from 1:00 to 5:00, but that she was kept in the grassy area outside for that length of time. Also, Juvelyn could have been mistaken as to the length of time she was kept by accused-appellant. She was only 12 years of age at the time of the incident and her harrowing experience, though it lasted for just a few minutes, could very well have been an eternity. At all events, the alleged discrepancies and inconsistencies in Juvelyn's testimony are inconsequential, given her youth and inexperience. They tend to buttress, rather than weaken, her credibility, and indicate that her testimony was not contrived.[43] Discrepancies should refer to significant facts which are crucial to the guilt or innocence of an accused.[44] In the main, the testimony of Juvelyn is consistent, as shown by the following portion of her testimony under cross-examination by defense counsel:

COURT:

Q When you arrived in the grassy area, what did accused Montejo do to you?

A He molested me.

Q How did he molest you?

A He kissed me, he removed my clothing, my short pants, and he abused me.

ATTY. FELICIA [Counsel for the Accused]:

Q What was your position when you were abused by Montejo?

A He made me lie down and placed himself on top of me.

Q Were you facing the ground or up?

A I was facing upward.

Q Did you not complain to accused Montejo with your position, both of your hands were tied?

A I complained.

Q

Perhaps his answer was that: "It is going to be alright"?

A He said, "Just leave it that way."

COURT

Q Did you shout?

A I cannot shout because my mouth was covered with a handkerchief.

ATTY. FELICIA

Q When accused Montejo said, "Just leave it that way," you made no more complaints?

A I complained because both my hands were aching.

COURT

Q That's the only act of the accused that he placed himself on top of you and nothing else?

A He inserted his.

ATTY. FELICIA

Q His finger?

A His organ.

COURT

Q Did it penetrate right away?

A Not yet, it took time.

ATTY. FELICIA

Q

Because he was not able to penetrate at the first attempt, it's because you have not spread your legs then, [were they] closed?

A My legs were already spread because I was resisting.

ATTY. FELICIA

Q Are you saying to this Honorable Court that your manner of resisting is by opening your legs?

A Yes.

COURT

Q Why did you open your legs?

A Because he forcibly spread my legs.

Q What did you do when you spread your legs?

A I resisted.

ATTY. FELICIA

Q So, the moment that his penis penetrated your vagina, your legs were already opened?

A

My legs were already opened at that time but when he made the push and pull motion, his penis did not penetrate yet my vagina, it took time.

COURT

Q But did it penetrate after all?

A Yes it penetrated, but it was so painful.

ATTY. FELICIA

Q Did you complain to him that it was painful?

A Yes, sir.

Q

And perhaps he also answered, "That it is going to be alright," what was his answer, that it is going to be alright?

A He did not answer.

Q So, he just continued with his act in having sexual intercourse with you?

A Yes, sir.

Q All the while when he was doing this, your mouth was covered, hands tied with a handkerchief?

A Yes, sir.

COURT

Q What is that act of the accused that made you complain?

A He made a push and pull movement.

Q How many minutes did it take him to make a push and pull movement?

A One hour.

ATTY. FELICIA

Q

How many times did you complain to accused Montejo that it was painful because you said you complained to him?

A Why did you do this to me, I am still young.

Q And in that span of approximately one hour, how many times did you say those words to him?

ATTY. GOKING

The question is vague, your Honor.

COURT

Witness may answer.

WITNESS

A

Many times, sir.

COURT

Q When he was making push and pull movement for one hour, was his penis all the time inserted in your vagina?

A

After half an hour, his penis penetrated my vagina.[45]

On re-direct examination, she explained that it was when she was struggling to free herself from accused-appellant that the latter removed the handkerchief from her mouth:

ATTY. GOKING [Private Prosecutor]

Q On August 10, 1989, how many times were you raped by accused Montejo?

ATTY. FELICIA [Counsel for the Accused]

Objection, your Honor.

COURT

Q You were threatened by accused Montejo, but how was this incident revealed afterwards?

A Because I could no longer stand what he did to me, so I decided to tell my parents.

ATTY. GOKING

Q Could you tell this court in what place did you say, "Why did you do this to me, I am still young?"

A In the grassy portion.

Q Would you tell this Court on what time did you say that, on that day?

A Around 1:00 in the afternoon.

Q

Was it before your mouth was covered, when your mouth was covered, or after the handkerchief was removed from your mouth?

ATTY. FELICIA

Already answered, your Honor.

COURT

Witness may answer.

ATTY. GOKING

I will rephrase my question, your Honor.

COURT

Proceed.

ATTY. GOKING

Q

When you complained, "Why did you do this to me, I am still young," was there a handkerchief in your mouth?

A No more, sir.

Q Why was not the handkerchief in your mouth?

A He removed it, sir.

COURT

Q So, it was after the sexual act that you complained?

A Yes, sir.

Q

You said that at the time of the sexual abuse you were twelve (12) years old, when you say twelve years old, you mean twelve years and one day, twelve years and two months or exactly twelve years old?

A Exactly twelve years old.

Q When were you born?

A April 26, 1977.[46]

On re-cross-examination, she further said that after the sexual intercourse, she saw blood in her private parts:

ATTY. FELICIA [Counsel for the Accused]

Q

When I was asking you in the cross examination, you said that you complained so many times to accused Montejo why he was doing the act on you, but when your counsel asked you in the re-direct, you said that you complained after the accused did the act on you, which is which now, remember that you are under oath?

ATTY. GOKING [Private Prosecutor]

We object to the question, your Honor, my question was: "When did you complain, before, during, or after the handkerchief was removed?"

COURT

Witness may answer.

WITNESS

A I was complaining while the handkerchief was still in my mouth.

COURT

Q After the sexual act, what did you observe in your vagina?

A There was blood (dugo).

Q What do you mean by "dugo," red or white?

A Red, sir.

ATTY. GOKING

We make it of record that the witness answered very slow, she said "nagdugo" but counsel for accused said "dugo," your Honor.

ATTY. FELICIA

We would like to make it of record also that the witness said "dugo" only which means "blood," your Honor.[47]

Juvelyn's claim that she had been raped by accused-appellant is consistent with the medical findings that her hymen is not intact. When a victim's testimony is corroborated by the physician's finding of penetration, as when the hymen is no longer intact, there is sufficient foundation to find the existence of the essential requisite of carnal knowledge.[48] The absence of physical injuries on Juvelyn and her failure to shout for help also do not preclude rape.[49] Moreover, for rape to exist, it is not necessary that the force or intimidation employed be so great or of

such character as could not be resisted. It is enough that the intimidation produces such fear in the victim that if she does not yield to the demands of the accused, something grave would happen to her. Intimidation would also explain why there were no traces of struggle which would indicate that the victim fought off her attacker.[50] In fact, lack or even absence of resistance is not necessary because the law does not impose upon a rape victim the burden of proving resistance.[51] As against the foregoing, the denial interposed by accused-appellant cannot prevail.

Third. With regard to civil indemnity, the trial court correctly awarded P50,000.00 to complainant Juvelyn B. Labalan, consistent with our rulings.[52] In addition, however, the amount of P50,000.00 as moral damages should be awarded. This item does not require proof for it is assumed that the complainant has suffered moral injuries.[53]

WHEREFORE, the decision of the Regional Trial Court, Branch 24, Cagayan de Oro City, finding accused-appellant Ernesto Montejo guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, is AFFIRMED with the MODIFICATION that, in addition to the amount of P50,000.00 as civil indemnity, accused-appellant is ordered to pay complainant Juvelyn B. Labalan the further sum of P50,000.00 as moral damages.

SO ORDERED.

Bellosillo, (Chairman), Buena, and De Leon, Jr., JJ., concur.
Quisumbing, J., on leave.

[1] Per Judge Leonardo N. Demecillo.

[2] Per Certification of the Office of the Local Civil Registrar of Initao, Misamis Oriental (Exh. 2; Records, p. 21), complainant's name is Joevelyn Boiles Nabalan.

[3] Per return of the alias warrant of arrest, Records, p. 81 (dorsal side).

[4] Records, p. 2.

[5] Id., p. 20.

[6] TSN, pp. 3-7, April 3, 1995.

[7] Id., pp. 14-17; pp. 3-4, 8-13, April 4, 1995.

[8] TSN, pp. 27-37, July 20, 1995.

[9] TSN, pp. 3-12, Aug. 11, 1995.

[10] Records, pp. 131-134.

[11] TSN, pp. 2-14, Sept. 8, 1995.

[12] TSN, pp. 3-7, Nov. 9, 1995.

[13] Id., pp. 8-25.

[14] TSN, pp. 3-30, Oct. 9, 1995.

[15] TSN pp. 2-19, Oct. 10, 1995; pp. 3-13, Nov. 6, 1995.

[16] TSN, pp. 3-10, Nov. 7, 1995.

[17] Id., p. 12.

[18] Decision, p. 8; Rollo, p. 36. Per table of contents of the TSNs, no TSN of Delfin Bongay, dated Dec. 15, 1995, was transmitted to the Court. (See Rollo, p. 12-A).

[19] Decision, p. 8; Rollo, p. 36. Per table of contents of the TSNs, no TSN of Sofronio Labalan, dated March 11, 1996, was transmitted to the Court. (See Rollo, p. 12-A)

[20] Records, p. 10. The affidavit in the Visayan dialect of Rosalio Dayadaya, dated December 28, 1989, was translated in English by Atty. Edmundo Raagas, Clerk of Court V, RTC, Branch 39, Cagayan de Oro City. (See Records, pp. 403-404)

[21] Records, p. 477.

[22] Decision, p. 11; Rollo, p. 39.

[23] Records, p. 449.

[24] Id., p. 477.

[25] TSN, pp. 3-8, July 24, 1996.

[26] Id., p. 528.

[27] Id.

[28] G.R. No. 134286, March 1, 2000.

[29] Records, pp. 4, 25, 32.

[30] Id., pp. 410-411.

[31] Id., pp. 288-289.

[32] Id., pp. 454-455.

[33] *Alonte v. Savellano, Jr.*, 287 SCRA 245 (1998).

[34] 267 SCRA 682 (1997).

[35] *Supra*.

[36] 280 SCRA 696 (1997).

[37] Records, p. 21.

[38] *People v. Fraga*, G.R. Nos. 134130-33, April 12, 2000; *People v. Pambid*, G.R. No. 124453, March 15, 2000; *People v. Atienza*, G.R. No. 131820, Feb. 29, 2000; *People v. Accion*, 312 SCRA 250 (1999); *People v. Bañago*, 309 SCRA 417 (1999); *People v. Molas*, 286 SCRA 684 (1998).

[39] *People v. Pambid*, *supra*.

[40] Records, pp. 16, 18.

[41] TSN, pp. 14-17, April 3, 1995.

[42] Appellant's Brief, p. 10; Rollo, p. 94.

[43] *People v. Sancha*, G.R. Nos. 131818-19, Feb. 3, 2000.

[44] *People v. Maglente*, 306 SCRA 546 (1999).

[45] TSN, pp. 13-18, July 20, 1995.

[46] *Id.*, pp. 22-24.

[47] *Id.*, pp. 25-26.

[48] *People v. Brondial*, G.R. No. 135517, Oct. 18, 2000; *People v. Rosales*, 313 SCRA 757 (1999).

[49] *People v. Luzorata*, 286 SCRA 487 (1998).

[50] *People v. Mangasin*, 306 SCRA 228 (1999).

[51] *People v. Ramos*, G.R. No. 136398, Nov. 23, 2000; *People v. Cantos*, 305 SCRA 786 (1999).

[52] *People v. Ramos*, *supra*; *People v. Napiot*, 311 SCRA 772 (1999); *People v. Gementiza*, 285 SCRA 478 (1998).

[53] *People v. Ramos*, *supra*; *People v. Napiot*, *supra*; *People v. Bañago*, *supra*; *People v. Prades*, 293 SCRA 411 (1998).

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